

Justice Must Be Seen to Be Done

Carey Young

Carey Young is a visual artist. Her practice since 2002 has addressed law as subject and material, and comprises various media including video, performance, photography, and installation. Her works have been exhibited at Tate Britain, the New Museum (New York), Hayward Gallery (London), and many others. She is Associate Professor in Fine Art at the Slade School of Fine Art, University College London, and Honorary Research Fellow at Birkbeck Law School, University of London.

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A central image in the consideration of law is the totemic figure of justice—Justitia—the blindfolded Roman goddess of justice. Often appearing in statue form in many courthouses and carrying a sword and scales, she heralds the idea of law as impartial and unseeing, of law as a system that, theoretically at least, is open to all—democracy as a form of blindness. The irony of this sightlessness will not be lost on artists, who tend (with good reason) to think of law as oafishly clunking behind them, laughably out of touch with contemporary artistic form, ideas, and methods, and unconversant with the light-fingered nimbleness of creative work. Law generally confines creative freedoms, increasingly in the interests of the gods of corporatised intellectual property. Artists often see law as dry and administrative, as an expensive threat, or something to be resisted (with the usual artistic-anarchic leanings), rather than, dare I say it, a source of curiosity, or a medium for them to work with, like paint.

Justice's blindness is said to represent objectivity—since postmodernism, another enemy of artists. Justice must be seen to be done, thereby allowing public access to many trials, and the principle of 'open justice', but law privileges language and the written word over images and aesthetics. In this era of McLuhanesque visibility-over-orality, in which Instagrammability has tended to trump criticality, this seems especially absurd. Legal theorist Peter Goodrich asserts that Justitia's blindfold 'marks an exclusion, an indication that mortals should keep out'—¹a class issue with which most of us can sympathise. Nevertheless, from the perspective of visual artists, or perhaps only us perverse ones, all this might represent temptation, in terms of a rich subject. Law may have been termed an 'empire'² (and that idea in itself should act as artistic provocation) but its gaps, elisions, and silences—and there are many—are lacunae, or a form of social-sculptural negative space. Law has an unconscious—we just need to analyse it.

Law's inherent relationship to performance could be seen as further

enticement. The courtroom can of course be seen as a 'theatre' of judgment, centring on the performance of authority and the fragile recall and transferral of mental images by witnesses and defendants as well as jury, judge, and litigants. Law's many performative statements, in which speech becomes act—'I sentence you', etc—have been termed 'superperformatives: performatives backed by force',³ evoking law's complex relation to the body and the physical. Law's inherent violence, its state- or sovereign-backed ability to remove a person from life, society, family, home, and possessions, is Foucault's 'technology of power over the body'.⁴ But we should not forget that the law also includes a liberatory potential, a choreographic circumscription of individual agency, rights, promises, and liberties.

The costumes (or uniforms) of law transform an individual into a symbol of sovereign power, convention, and patriarchy. Bat-like, the figure of the lawyer flits through European and postcolonial societies in its traditional black gown, the very image of duplicity, its vampiric fees deterring all but the wealthy in this era of corporate feudalism and lack of access to justice. Collectively, these black-robed lawyers become mere worker ants performing to their red queens (we can imagine Francis Bacon's or Velasquez's Pope Innocent X, or the figure of Death as depicted in much medieval art). The win/lose binary of the law establishes legal precedents which build a nest of traditions, the very architecture of law. The black gown is intended to convey ritual, status, and sombre respect for the law. The gown, with its assumed anonymity, operates as a kind of symbolic shield, a suggestion of loss, or a potent blankness, a further clue as to law's caesurae.

Paradoxically, the most vital performer in the courtroom is never physically present: the immaterial, abstract character of the 'reasonable person' whose morals, behaviour, and common sense are the standards against which the errant behaviour of the accused is judged. As feminist legal theorists have remarked, albeit without

1 Peter Goodrich, *Legal Emblems and the Art of Law* (Cambridge University Press 2015).

2 Ronald Dworkin, *Law's Empire* (Belknap Press 1988).

3 Julie Stone Peters, 'Legal Performance Good and Bad' (2008) 4(2) *Law, Culture and the Humanities* 179.

4 Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Vintage Books 1979).

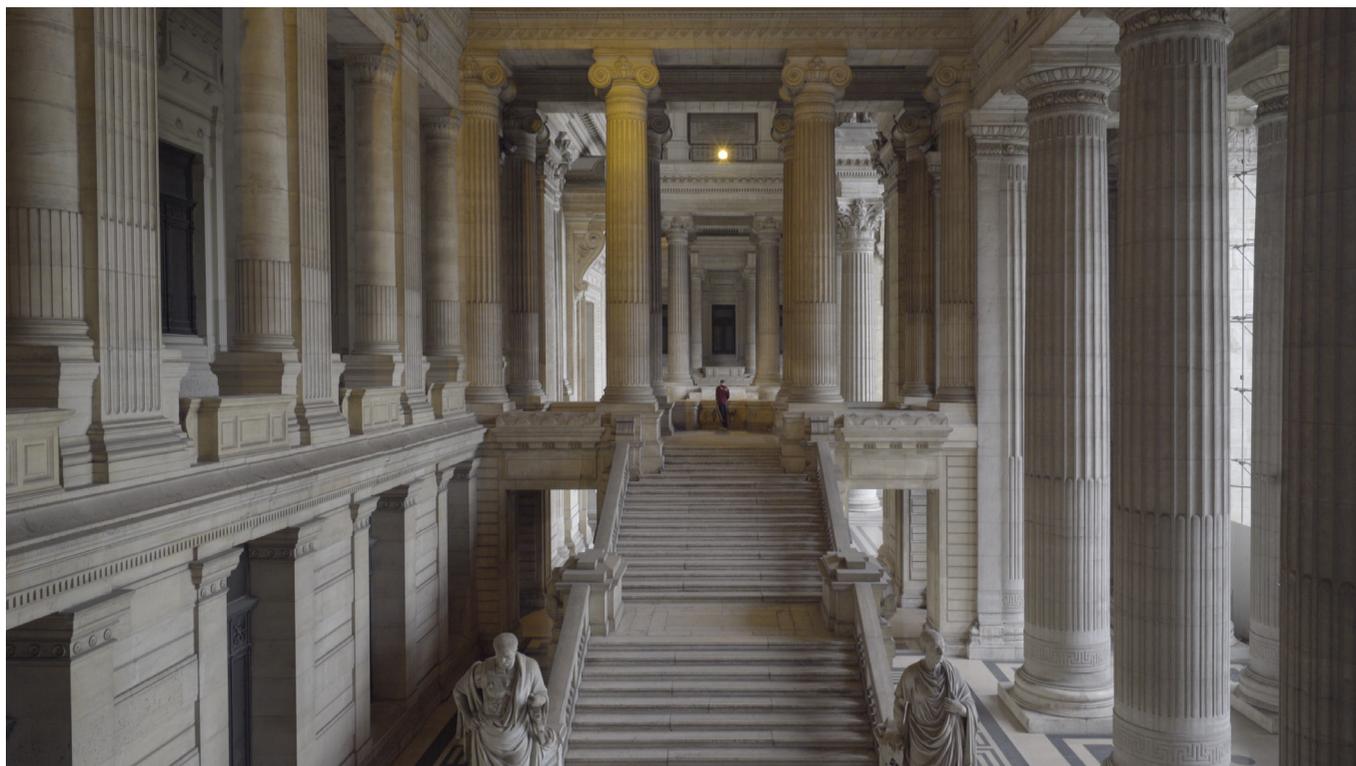


Fig 1. Carey Young, *Palais de Justice* (still), 2017. Single-channel HD video (from 4K); 16:9, colour, quadraphonic sound; 17 mins 58 secs.
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enough impact (yet) on the legal canon, the ‘reasonable person’ in fact represents the essence of patriarchy, tacitly understood as male, heterosexual, middle-aged, and white. It is the male gaze in penal form. So essential is this idea of ‘reasonableness’ to the operation of law that we must also remember it is a legal fiction, a conjuring of an ‘as if’ so as to enable the smooth running of ‘the law’.

The spectator’s role in all this, going back to the beginning of recorded history,⁵ goes beyond that of court audience. Rather, the spectator is a witness to the act of justice. This is spectatorship as documentation, and memory as evidentiary record (ideas which will be familiar to a contemporary arts audience from recent art practices such as that of Tino Seghal). But spectatorship has its imaginary dimensions. Due to the popularity of courtroom drama as a major cultural export of Hollywood and US TV networks, fiction ends up scripting reality: French lawyers increasingly complain that defendants, well versed in US crime drama, expect an American style of trial and legal representation, which is profoundly different to the French legal system.⁶

We must forget assumptions that we know what law is. The more you consider what law might be, the less clear it gets. Many (especially in the arts) assume law is synonymous with business. Like the institution of money, law requires mass belief. Yet law remains our most powerful method to rein in spiralling corporate greed. Law is an instrument of the state, and closer to politics than

business. As some would have it, law is like a two-dimensional plane, with well-marked boundaries, clearly defined limits and categorical definitions.⁷ ‘It is always watching us’,⁸ a ‘living archive’,⁹ an ‘official version of life’,¹⁰ or a ‘museum of order’.¹¹ Conversely, courtroom argumentation can centre on a creative interpretation of past precedent. Or, following Kafka (and Derrida’s interpretations), law is a form of the sublime, full of spectres and ruins.¹² Then, as others argue, ‘law is not justice’,¹³ it ‘flies in the face of logic’,¹⁴ is ‘a product of, and promoter of racism’,¹⁵ and ‘written in a field of pain and death’.¹⁶ Law is, instead, a societal ‘dumping ground’ and lawyers are its ‘janitors’ or ‘refuse collectors’,¹⁷ standing ‘at the threshold of order and disorder at society’s edge’.¹⁸ All of these ideas can convince, and yet, most are contradictory. And this confusion is why law is one of the great, underexplored artistic subjects.

7 Pierre Schlag, ‘The Aesthetics of American Law’ (2002) 115 *Harvard Law Review* 1049.

8 Foucault (n 4).

9 Fred Botting, *The Gothic* (Boydell and Brewer 2001).

10 Goodrich (n 1).

11 Foucault (n 4).

12 Botting (n 9).

13 Jacques Derrida, *Before the Law* (Derek Attridge ed, Acts of Literature, Routledge 1992).

14 Colin Dayan, *The Law is a White Dog* (Princeton University Press 2011).

15 Mari J Matsuda, *Where is Your Body* (Beacon Press 1996).

16 Robert M Cover, ‘Violence and the Word’ (1986) 95 *Yale Law Journal* 1601.

17 Pierre Legendre, *L’Empire de la vérité: Introduction aux espaces dogmatiques industriels* (Fayard 1983) 49 (as cited and translated in Peter Goodrich, *Languages of Law: From Logics of Memory to Nomadic Masks* (Cambridge University Press 2004)).

18 Gary Watt, *Dress, Law and Naked Truth: A Cultural Study of Fashion and Form* (Bloomsbury 2015).

5 Judith Reznik and Dennis Curtis note that public access to trials was first recorded within Babylonian culture circa 3100 BC. Judith Reznik and Dennis Curtis, *Representing Justice* (Yale University Press 2011).

6 Barbara Villez, ‘Performing the Law on Television’ (Performing the Law symposium, London, January 2014).



*Fig 2. Carey Young, Palais de Justice (still), 2017. Single-channel HD video (from 4K); 16:9, colour, quadraphonic sound; 17 mins 58 secs.
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*Fig 3. Carey Young, Palais de Justice (still), 2017. Single-channel HD video (from 4K); 16:9, colour, quadraphonic sound; 17 mins 58 secs.
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